



REMARKS/ARGUMENTS

This is intended to be a complete response to the Official Action mailed October 27, 2004, in which claims 1-20 were rejected. Applicant has amended claims 1-20 herein.

Specification

In the specification, the paragraph [0001] has been amended to show the patent status of USSN 10/326,646.

Rejection Under 35 U.S.C. §102(b)/103(a)

Claims 1-20 stand rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Renner (US 2,355,559) 1940.

In the rejection it is stated:

"Regarding **claims 1-20**:

The claims are being construed as **product-by-process claims**; as in the independent claims 1, 6, 11 and 16, "a plant package produced by the method of", is recited, and the dependent claims further recite, "the steps of", "securing" and "sized".

A product-by-process claim is not limited to the manipulations of the recited steps, only the structure implied by the steps.

A plant package comprising a tubular sleeve, having a pot containing a floral grouping contained within, as recited in the independent claims, would not be expected to impart distinctive structural characteristics to the pot cover.

Renner '559 depicts a plant package comprising a pot containing a floral grouping as recited in the independent claims;

the instant plant package appears to be the same or similar to that of the prior art (Renner) product, although the prior art plant package may be produced by a different process.”

Applicant respectfully traverses the rejection in view of the amendments made herewith. The independent claims have been amended to delete the “product-by-process” language. The invention now claimed is a plant package comprising a potted plant and a tubular sleeve, notably wherein the tubular sleeve is initially constructed in a flattened condition. In particular, the tubular sleeve differs structurally from a pot cover of such as that of Renner in that the tubular sleeve has a first side and a second side while the pot cover of Renner has an outer surface which is essentially one continuous surface and does not have a first side and second side. This is also true of the cover of Creastyl FR '126. Regarding the other patents cited as secondary references, Landau '782 teaches a sleeve having a cylindrical lower portion rather than a tapered lower portion, and Vlaardingen NL '658 has a publication date of March, 1996, which is after the effective filing date of the present application. Vlaardingen is thus not valid prior art under 35 U.S.C. §102 against the present application (see further remarks below regarding the effective filing date of the present application).

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection.

Double Patenting

Claims 1-20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 9 and 13 of U.S. Patent No. 6,625,930 in view of U.S. Patent No. 6,347,481.

Applicant has submitted herewith a terminal disclaimer over U.S. 6,625,930 thereby mooting the rejection. In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection.

Regarding the Effective Filing Date

In the official action it is stated:

"...it is the Examiner's contention that CON. 6,510,652 is the effective filing date of the instant application, as the instant limitation, "free of a detachable upper portion sized to surround and encompass the floral grouping disposed within the pot", is absent from the earlier Patents in the instant application continuing data."

Applicant respectfully traverses.

First, it is apparently not disputed that the present application comprises a continuation application of U.S. 6,625,930, which is a continuation of U.S. 6,510,652, which is a continuation of U.S. 6,347,481, which is a continuation of U.S. 6,141,906, which is a continuation of U.S. 5,941,020, which is a continuation of U.S. 5,625,979, having a filing date of May 3, 1994.

Applicant's entire present disclosure thus relates back to a priority date of May 3, 1994.

The disclosure of a tubular sleeve free of a detachable upper portion sized to surround and encompass a floral grouping in a pot and which has a plurality of extending portions or a non-linear upper edge is shown for example in Figures 4, 17, 19, 22, 26 and 30 of the present application, and which is also present in the '979 disclosure.

The present claims are thus enabled and supported in the original disclosure of the '979 patent at least, (and, indeed further back to U.S. 5,572,851 filed March 31, 1994).

Applicant thus traverses Examiner's assertion that the limitation of a sleeve "free of a detachable upper portion sized to surround and encompass the floral grouping" is not found in Applicant's original priority document. Such an embodiment is shown in Figures 4, 17, 19, 22, 26 and 30 of the '979 patent.

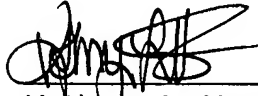
Moreover, numerous patents having the same or a similar claimed limitation have issued based on the disclosure of the priority document '979, including for example, U.S. 5,740,658; 6,189,290; 6,279,296; 6,401,431; 6,467,218; and 6,470,624.

Conclusion

In view of the above, Applicant submits the present application is deserving of an effective filing date, May 3, 1994 and of March 31, 1994 and

submits that the claims are now in a condition for allowance and request issuance of a Notice of Allowance thereof.

Respectfully submitted,



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